Madras H-27—88,004—4-11-46.

Home (194 7) Department.

Ms. SERIES

G.O. NO Ms.415T.

Dated 10th November 1947.

[Despatch Abstract.]

Criminal appeal - Appeal against acquittal - Bellary district - Sessions Judge, Bellary - C.A. Nos. 27 and 30 of 1947 - Application - Sanctioned.

From
K.N.Anantanaman,Esq.,I C.S.,
District Magistrate, Bellary.

To
The Secretary to the Government,
(Home Department)Fort St.George,
Madras.

ADDITIONAL ASSISTANT SECRETARY
14 OCT 1947
HOME DEPARTMENT

ASSISTANT SECRETARY TO GOVERNMENT
14 OCT 1947
HOME DEPARTMENT

No.1955/47.F.1 dated 8.10.47

Sir,

Revision C.R.No.27 and 30 - on the file of Sessions Judge,Bellary moving the High Court in revision requested.

In C.C.142/47 on the file of Addl.First Class Magistrate Bellary the Sub Inspector of Police Kampli filed a charge-sheet against the accused Boya Venkatappa and Lingayat Pompanna of Thornagal for an offence under Sec. 7 of the Essential Supplies(Temporary Powers) Act 1946. After trial the Addl.First Class Magistrate,Bellary found the accused guilty and convicted and sentenced them to undergo Rigorous Imprisonment for three month each. They preferred an appeal to the Sessions Judge Bellary against the orders of the Addl.First Class Magistrate Bellary. The Sessions Judge Bellary allowed the appeals and revised the sentence of the Lower Court on the ground that neither the order that the accused are alleged to have violated nor its publication has been proved.

2. The Public Prosecutor Bellary who was consulted in the matter is of opinion that under the Essential Supplies(Temporary Powers)Act of 1946 the provisions of Rule 119 of the D.O.I.Rules are omitted and that all rulings under the D.O.I.Act do not apply so far as the new Act is concerned in view of the omission from the Act the provisions of Rule 119. He further adds that oral evidence has been addured to the effect that the notification which was contravened has been duly published and that the court can take judicial notice of such publication. I entirely agree with his views and consider that this is a fit case for moving the High court evision.

3. I, therefore request that the Government may be pleased to

move the High Court in revision to revise the orders of the Sessions Judge Bellary passed in C.A.No.27 and 30 on the file of his court.

4. Two copies of the judgment of the Lower court and the appellate court and the opinion of the Public Prosecutor Bellary are enclosed.

nsn.Murthi/8.10.47.

Dist.Magistrate.

Home department

Endorsement No. 71503 F/47-1 dated 17 XII

Referred to the Public Prosecutor, Madras for remarks on the proposal of the District Magistrate, Bellary. The reply to this reference should be sent not later than 15-11-47.

For Secretary to Government

16/10/47

To
The Public Prosecutor
Madras

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Copy of G.P.No. 221 dated 25-9-1947 from the Public Prosecutor, Bellary to the Dist. Magistrate, Bellary.

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Sub:- Criminal Justice - C.A's - 23, 24, 33 and 34 of 47 on the file of the Sessions court Bellary.

I have gone through the appellate judgments, the connected records and the opinion of Mr. Raghunatha Rao, A.P.P.No.I.

I agree with the remarks of A.P.P.No.I In fact I contended before the learned sessions Judge met under the Eseential supplies (Temporary powers) Act of 1946, the provisions of rule 119 of the Defence of India Act are omitted. All the rulings are under the D.O.I Act and do not apply so far as the new Act is concerned in view of the omission from the Act the provision of rule 119. Oral evidence in every case has been adduced that the notification complained against has been duly published and the court can take judicial notice of the said publication. But the learned Sessions Judge holds that the said notification ought to have been filed in evidence and I think he is not right in saying so.

In addition to these 4 cases, the Sessions Judge has taken the same view in many other cases that came up before him subsequently and has allowed the appeals. I feel that the matters have to be taken to the High court in revision as they involve an important question of interpretation of law.

All the records are herewith sent back and their receipt may kindly be acknowledged.

M.A.Basith,
Public Prosecutor,
25-9-47.

True copy.

V.L.ETHIRAJ ESQ..C.I.E.,
Bar-at-Law.
Public Prosecutor,Madras.

To
The Secretary to Government,
Home Department, Madras.

Opn.No.109/47, dated 4th Novr.1947.

Sir,

Sub: Appeal against acquittal - C.A.27 & 30/47, Sessions Judge, Bellary - C.C.142/47,A.F.C.M. Bellary - Forwarding opinion.

With reference to Endorsement No.71503 F/47-1, Home, dated 17-10-47, I have the honour to forward herewith my opinion in the above matter.

2. The papers received for reference are returned herewith.

I have the honour to be,
Sir,
Your most obedient servant,

V.L. Ethiraj
Public Prosecutor.

Opinion.

The Sessions Judge has acquitted the accused who were convicted by the Additional First Class Magistrate, Bellary for the offence of

transporting paddy without a permit punishable under Sec. [illegible] the Essential Supplies (Temporary Powers) Act 1946 on the [illegible] that the notification or order contravened has not been prov[illegible] to have been issued or published. The learned Judge has failed to note that the notification in question was published in the Gazette and there is no special mode of publication prescribed in the Essential supplies (Temporary Powers)Act 1946. The lower appellate court ought to have taken judicial notice of the publica[illegible] in the Gazette. I am of opinion that an appeal against acquittal is likely to be successful.

Public Prosecutor.

R/

4.11.47

9/6 14/11.

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C.No. 71503 F/47

.. 1, ut in G.O. No. 769, 1, d 26-2-47]
PP9-10 C.F. 8 (Y)

Home de

G.O. Ms. No. 4181 d 13-11-47

Criminal appeal - Appeal against acquittal - Bellary dt. - Sessions Ju Bellary - C.A. Nos. 27 and 30 of 1947 - Application - Sanctioned.

Read:-

From the D.M., Bellary No. 1955/47 E.1

From the P.P., Madras Gpn No. 109/47 d

ORDER:-

Under section 417 of the Code of Procedure, 1898, the Public Prosecutor, is requested to present an appeal High Court against the acquittal b Sessions Judge, Bellary of the appelle in C.A. Nos. 27 and 30 of 1947 on his file

Authenticated 17/11

To
The Public Prosecutor, Madras.
(with copy of pp 1-2 C.F. and p 5 C.F. in o.d. and records at QT.
The D.M., Bellary.

9/11/47

12/11

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Note:- P.T

Note:- The draft order on p/ante follows the opinion of the P.P., Madras at pp7-8 e.f.

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ASSISTANT SECRETARY TO GOVERNMENT
16 OCT 1948
HOME DEPARTMENT

[illegible]

Present:-

The Honourable Mr. Justice [illegible].

CRIMINAL APPEAL No. 220 of 1947.

The Public Prosecutor	... ...	Appellant.
1. [illegible]		Respondents.
2. [illegible]		(Accused Nos. 2 and 1).

Appeal under Section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid Respondents (Accused Nos.2 and 1) by the Court of Session of Bellary Division in S.C.Nos.57 and 58 of 1947 preferred against the Judgment of the Court of the Additional 1st Class Magistrate of Bellary in C.C. 143 of 1947.

This Appeal coming on for hearing on Wednesday, the 25th day of September 1948, upon perusing the Petition of Appeal and the record of the evidence and proceedings before the lower Courts and upon hearing the arguments of the Public Prosecutor - the Appellant and Mr. V.S. [illegible] Iyengar and Mr. T. [illegible], Advocates for the 1st Respondent (2nd Accused) and of Mr. K. Kalyanasundaram, Advocate for the 2nd Respondent (1st Accused) and having stood over for consideration till this day, the Court delivered the following

JUDGMENT :-

This is an appeal by the Public Prosecutor against the acquittal of the accused by the Learned Sessions Judge of Bellary. The accused were convicted by the Additional First Class Magistrate, Bellary, under section 7 of the Essential Supplies (Temporary Powers) Act, 1946. The learned Sessions Judge held "the appellant not proved beyond reasonable doubt that they are alleged to have violated any the publication has been proved". I am not sure if

The [illegible] Judge's attention was drawn to [illegible] judgment of the learned Magistrate, wherein the learned Magistrate reported that the notification issued by the Controller of Civil Supplies, Madras, was published in the Fort St. George Gazette and its contents were also published in village by way of tom tom.

On behalf of the [illegible] Mr. [illegible] did not dispute the action of publication in the village by way of tom tom by the notification issued by the Controller of Civil Supplies; but the only point urged was that the correctness of the findings of the learned Magistrate, [illegible] the publication of the notification in the village by way of tom tom [illegible] permit.

The only question to be considered now is as [illegible] costs. The learned Magistrate sentenced the accused to undergo rigorous imprisonment for three months each. In addition the paddy seized were ordered to be forfeited to the Government. [illegible] that the charged brought: the date of the offence and the date of the [illegible] to be paid and to send the accused back to jail. [illegible] by the learned Magistrate [illegible], the [illegible] Section 7 of the essential Commodities Act, 1955, [illegible] pay a fine of Rs.[illegible]/-; in default they will [illegible] imprisonment for a period of [illegible] months. The order of the learned Magistrate forfeiting the paddy seized to Government will stand confirmed.

(Sd.) A. Nyayam [illegible]
[illegible], Madras.

(True copy)

V. Sonalakshmi
[illegible]

To,
1. The Sessions Judge of Salem [illegible]
2. The Additional 1st Class Magistrate of [illegible]
3. Sri. through the Special Magistrate of [illegible]
4. The Public Prosecutor, High Court, Madras.
5. [illegible]
6. The [illegible] Magistrate of [illegible]

C.A.830-6-47.

Public Prosecutor's Officer,
Madras dated 13-10-48.

Forwarded to the Secretary to Government, Home Dept, Madras with ref. to G.O.Ms.No.4181, Home, dated 14-11-47.

P.9 (1)

R. S. Avinashamathan
Asst Public Prosecutor

To

The Secretary to Government
Home Department,
Madras.

Home (F)

The appellate judgment of the High Court on Pp 1-2 ante is for [illegible]. May be lodged and filed with the G.O. at (1).

19/10/48

(B.P.S.D. F.)

Passed